



**City Council Agenda Report**  
**Meeting Date:** September 06, 2011  
**Department:** Management Services

---

**SUBJECT:**

CITY MANAGER EMPLOYMENT AGREEMENT

**RECOMMENDED ACTION(S):**

Approve the City Manager Agreement for Employment and authorize the Mayor to execute and the City Clerk to attest the document.

---

**EXECUTIVE SUMMARY:**

The City Council recently completed its annual performance evaluation of Robert C. Dunek, Lake Forest's City Manager since 1995. The attached Agreement includes a three-year term which annually extends by one year unless the City Council directs otherwise. The Agreement also includes a 3.5% increase to Mr. Dunek's base salary to \$232,456, effective December 2011. This salary increase is offset by an increased employee required contribution of 3.5% of salary toward retirement benefits, resulting in a net zero fiscal impact for the City and no overall increase in compensation for Mr. Dunek.

---

**BACKGROUND:**

After a competitive recruitment process, Robert C. Dunek was appointed City Manager of the City of Lake Forest on December 19, 1995. The City Council has annually evaluated Mr. Dunek's performance since appointment and authorized compensation adjustments as deemed warranted.

In December 2010, the City initiated employee benefit cost sharing, and all full-time employees began contributing 3.5% of their salary toward retirement benefits. Beginning December 2011, all full-time employees will be required to contribute an additional 3.5% for a total of 7% of their salary toward retirement benefits. This 7% represents the "total normal member contribution" or "employee share" of CalPERS retirement contributions. Based on performance and consistent with practices for all City Employees during this fiscal year, Mr. Dunek is eligible for a maximum base salary increase matching the requirement to contribute an additional 3.5% of salary towards the premium for PERS retirement.

## **DISCUSSION:**

The City Council has completed its performance evaluation of the City Manager for Fiscal Year 2010-11. Following that review, the City Council directed the City Attorney to prepare the attached City Manager's Employment Agreement to outline the duties, compensation, term and other conditions of employment (Attachment 1). The Agreement provides for an annual salary of \$224,595, with a 3.5% increase effective in December 2011 to off-set the retirement contribution increase required of all full-time employees. In addition to base salary, compensation includes:

- eligibility for up to a \$12,000 performance-based incentive as determined by the City Council (no performance bonus is provided this year due to the City's economic conditions)
- automobile allowance of \$587.75 per month
- life insurance in the amount of \$250,000
- all benefits provided to the City's Department Heads, including "2% at age 55" CalPERS retirement and health, dental, and vision coverage
- professional development, including dues, subscriptions, conferences and memberships

The term of the agreement is July 1, 2011, through June 30, 2014. On June 30, 2012, and each June 30 thereafter, the agreement is automatically extended for one additional year unless the City Council declares its intention not to renew the Agreement for an additional year.

---

## **FISCAL IMPACT:**

Effective December 2011, the Agreement provides for a salary increase of \$7,861, or 3.5%, to an annual salary of \$232,456. This salary increase is offset by an increased employee contribution of 3.5% of salary toward retirement benefits, resulting in a net zero fiscal impact for the City and no overall increase in compensation for Mr. Dunek.

---

## **ATTACHMENTS:**

1. Agreement For Employment: City Manager

Submitted By: Debra Rose, Deputy City Manager / Director of Management Services

Reviewed By: Robert C. Dunek, City Manager

Attachment

**AGREEMENT FOR EMPLOYMENT  
CITY MANAGER**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, effective July 1, 2011 except as specifically provided herein, by and between the City of Lake Forest, a California general law municipal corporation of the State of California, hereinafter referred to as "City" and Robert C. Dunek, hereinafter referred to as "Manager."

**WITNESSETH**

WHEREAS, the City Council of the City of Lake Forest appointed Robert C. Dunek as City Manager of the City of Lake Forest, by Resolution 95-70 adopted on December 19, 1995; and

WHEREAS, the City desires to continue to employ the services of Robert C. Dunek as City Manager of the City of Lake Forest as provided by the Lake Forest Municipal Code and State law; and

WHEREAS, it is the desire of the City Council of the City of Lake Forest to provide certain benefits, and establish certain conditions of employment of Manager; and

WHEREAS, Robert C. Dunek desires to accept continued employment as the City Manager of the City of Lake Forest, and to accept the provisions of this Employment Agreement.

NOW, THEREFORE, in consideration of the respective and mutual covenants hereinafter contained and made, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and agreed, and subject to all the terms and conditions hereof, City and Manager agree as follows:

**Section 1: Appointment and Duties**

A. The City Council of the City of Lake Forest has hereby appointed Robert C. Dunek as City Manager of the City of Lake Forest to perform those functions and duties specified in the Lake Forest Municipal Code, and the Government Code of the State of California, and to perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign.

B. Manager agrees to remain in the exclusive employ of City until this agreement is terminated by City or Manager as provided herein. The term "employed" shall not be construed to include teaching, writing, consulting, or pursuing other vocational interests performed outside of normal business hours which may occasionally pay a stipend or wage, and which do not interfere with the performance of the duties of City Manager or constitute a conflict of interest under applicable law.

## **Section 2: Compensation**

A. Effective July 1, 2011, the City shall pay Manager an annual Base Salary of two hundred twenty-four thousand five hundred and ninety-five dollars (\$224,595) in installments at the same time as other executive management employees (department heads) of City are paid. Effective December 23, 2011, the City shall pay Manager an annual Base Salary of two hundred thirty-two thousand four hundred and fifty-six dollars (\$232,456).

B. City, from time to time, may increase Manager's Base Salary by written amendment to this Agreement.

C. In addition to the Base Salary set forth above, Manager's compensation shall include a performance-based incentive for continued outstanding performance. Manager may receive up to twelve thousand dollars (\$12,000) per fiscal year for each year this Agreement is in effect as an incentive for continued outstanding performance as determined by the City Council. Such incentive shall not become part of Manager's Base Salary. Such incentive, if any, shall be determined concurrent with the annual performance evaluation by the City Council conducted pursuant to Section 7, below and paid in July of that same year.

D. Effective July 1, 2011, City shall provide Manager an automobile allowance in the amount of five hundred eighty-seven dollars and seventy-five cents (\$587.75) per month, with an annual increase commencing on July 1, 2012 and on each July 1st thereafter by the annual percentage increase in the Consumer Price Index ("CPI") for the area that includes the City of Lake Forest. The calculation of the percentage increase shall be based on data from the immediately preceding April to April period. For example, the car allowance increase effective on July 1, 2012, shall be based on the increase in the CPI from April 2011 to April 2012. Under no circumstances shall the monthly car allowance be decreased. City shall and pay Manager a cell phone allowance of \$100 per month.

E. Manager shall be entitled to the same holidays, sick leave, executive leave and buyback, annual physical, and long-term disability benefits, insurance benefits including, but not limited to, life, health, vision, and dental coverages, and vacation buy-back as provided other executive management employees (department heads) within the City's employ in effect as of the date of this Agreement and as they may be changed from time to time by City. Manager shall be entitled to receive a vacation leave cap of 300 hours.

F. City shall provide Manager with two hundred fifty thousand dollars (\$250,000) of life insurance, the policy for which to be selected, paid, and maintained by City for the term of this Agreement. Manager shall have the sole right to name the beneficiary or beneficiaries of said policy.

G. City shall maintain Manager's enrollment in the Public Employee Retirement System of the State of California, and shall pay, in addition to City's share of said plan, the Manager's contribution to such retirement system pursuant to the City's agreement with PERS.

H. City shall pay all costs to maintain the Section 401(a) qualified retirement plan City previously established and funded on Manager's behalf.

I. Except as otherwise set forth in this Agreement, in addition to the benefits specified in subparagraphs A through H herein above, Manager shall receive any and all employee benefits otherwise accorded City's executive management employees (department heads) who are miscellaneous members of the California Public Employees Retirement System, and as those benefits may be changed from time to time.

J. City shall include all benefits to Manager due hereunder during any fiscal year of City in its annual budget for such year and to make the necessary annual appropriations for all such benefits.

### **Section 3: Term; Notice of Termination; and Severance**

A. Term and Extension. The term of this Agreement shall be from July 1, 2011 through June 30, 2014, unless extended or terminated as provided herein. On June 30, 2012, and on each succeeding June 30th while this Agreement is in effect, this Agreement shall be automatically extended for one additional year (i.e., in 2012 the Term of this Agreement shall be extended until June 30, 2015, in 2013 the Term of this Agreement shall be extended until June 30, 2016, and so on) unless prior to such date by a majority vote of the entire City Council in attendance at any lawfully called meeting, the City Council declares its intention not to extend this Agreement for one additional year.<sup>1</sup> Any such decision by the

<sup>1</sup> For purposes of this Agreement, the "entire" City Council for purposes of determining a "majority" shall be based upon those seats which are filled at the time a decision is made. For example, if all five seats

City Council not to extend the Term by one additional year shall not constitute a termination for purposes of Paragraph C of this Section.

B. Notice of Termination. Manager serves at the pleasure of the City Council and City reserves the right to terminate Manager and this Agreement upon the vote of a majority of the entire City Council in attendance at any lawfully called meeting. In such event, the term extension set forth in Paragraph A above shall not apply. In any event, City shall provide Manager with not less than thirty (30) days' notice of its decision to terminate this Agreement, and as provided by the provisions of the Ralph M. Brown Act, California Government Code Section 54950 et seq. Due to the important nature of Manager's duties to the City, if Manager terminates this Agreement, Manager must provide the City Council with at least thirty (30) days' prior written notice to the date he ceases to perform his duties and responsibilities under this Agreement and the provisions of the City's Municipal Code. However, during the ninety (90) day period immediately preceding or following the date of a regular or special municipal election, City shall take no action, whether immediate or prospective, to remove, suspend, terminate, request the resignation of, or reduce the Base Salary and benefits of Manager. City acknowledges that this period is longer than that specified in the Lake Forest Municipal Code, but provides said period nevertheless as an additional inducement for Manager to enter into this Agreement.

C. Termination without Cause. In the event Manager is terminated other than for cause or disability by a majority vote of the entire City Council in attendance at any lawfully called meeting, City shall provide Manager with severance pay equal to six (6) months Base Salary and six months of medical and other health related insurance coverage ("Severance Compensation"). Additionally, Manager shall be entitled to one additional month of Severance Compensation for every five (5) years of service, except to the extent the additional Severance Compensation is limited by State law. Manager shall be compensated for any unused leave, holidays, and other benefits then accrued. Should Manager die before receiving all Severance Compensation provided for under this agreement, such payment shall be paid and provided to Manager's heirs, administrators, representatives, or executors as provided by law.

D. Termination for Cause. In the event Manager is terminated because of his conviction of a felony which is likely to have a material adverse impact on City or Manager's reputation, City shall have no obligation to pay the Severance Compensation as set forth in subparagraph C, above.

---

are filled, a majority of the "entire" City Council is three. If four seats are filled, a majority is still three. If only three seats are filled, a majority is two.

E. Termination for Good Reason. If at any time during the term of this Agreement, City reduces the salary or other financial benefits of Manager in an average (mean) percentage greater than that of other executive management employees (department heads) within City's employ, or in the event City refuses, following written notice, to comply with any provision benefiting Manager herein, or Manager resigns following a request that he resign made by a majority of the entire City Council in attendance at a lawfully called meeting, then Manager shall be deemed to be "terminated" as of the date of such reduction, refusal, or request within the meaning and context of Section 3.C herein.

F. Termination Based on Disability. In the event Manager is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity, or health reasons for a period of three consecutive months beyond any provided sick leave, the City may terminate this Agreement upon passage of those three consecutive months. Upon termination of the Agreement for the reasons stated in this paragraph, City shall provide the Manager Severance Pay as provided in Section 3.C. The amount of Severance Compensation shall be reduced by an amount equal to any disability insurance proceeds then being received by Manager from any policy provided by City.

#### **Section 4: Professional Development**

City agrees to pay for the professional dues, subscriptions, and other costs of Manager deemed necessary for his participation in national, state, regional, and local associations and organizations and in meetings, conferences, and training related thereto, including, but not limited to, the International City/County Management Association, the California City Management Foundation, the League of California Cities, and the Orange County City Managers' Association, which are considered mutually desirable for his continued professional participation and growth and are for the good of City. The Manager's attendance at the annual conference of the International City/County Management Association shall be subject to the annual budgetary approval of the City Council.

#### **Section 5: General Expenses**

City recognizes and agrees to pay the job-related expenses incurred by Manager in the course of his duties as approved by the City Council.

#### **Section 6: Indemnification**

City agrees to defend, hold harmless, and indemnify Manager against any tort, professional liability claims or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope and course of the performance of Manager's duties.



## **Section 7: Performance Review**

City Council agrees to provide, prepare, and participate in reviews of Manager's performance. The objective of such review shall be to maintain an optimal working relationship and a mutual understanding and agreement on duties, responsibilities, and priorities between Manager and the City Council. The City Council shall conduct such review at least annually at a City Council meeting or meetings beginning in April and concluding no later than June 30 of each year. The parties shall work in good faith to timely provide each other the relevant background information, evaluation criteria and feedback necessary for the performance evaluation and to complete the performance evaluation process within the timeframes set forth herein.

## **Section 8: Bonding Requirements**

City shall bear full cost of the fidelity bond required of the Manager under the Lake Forest Municipal Code or State law.

## **Section 9: Other Terms and Conditions**

- A. This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, executors, administrators, successors, and assigns of the parties provided, however, Manager may not assign Manager's obligations hereunder.
- B. No provision of this Agreement may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing by City and Manager. No waiver by either party at any time or the breach of, or lack of compliance with, any conditions or provisions of this Agreement shall be deemed a waiver of other provisions or conditions hereof.
- C. The text herein shall constitute the entire agreement between the parties and shall supersede any and all previous agreements and understandings of the parties except as otherwise provided in this Agreement.
- D. Should either party commence legal action or proceeding against the other based upon this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees.

## **Section 10: Severability**

If any provision, or portions thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable and shall remain in full force and effect.

## **Section 11: Notices**

A. Notices pursuant to this Agreement shall be given by personal service or deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

(1) City of Lake Forest  
25550 Commercentre Drive, Suite 100  
Lake Forest, California 92630

(2) Manager, Robert C. Dunek  
25550 Commercentre Drive, Suite 100  
Lake Forest, California 92630

B. Notices also may be personally served in the same manner as is applicable to civil judicial practice.

C. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission by the United States Postal Service.

D. Either party hereto may change its respective address of record by providing written notice thereof in accordance with this Section.

[SIGNATURES ON PAGE 8]

**IN WITNESS WHEREOF**, the parties have executed this Agreement the date and year first above written.

**CITY OF LAKE FOREST**

**MANAGER**

\_\_\_\_\_  
Peter Herzog  
Mayor

\_\_\_\_\_  
Robert C. Dunek  
City Manager

**ATTEST:**

\_\_\_\_\_  
Stephanie D. Smith, CMC  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney

55136.00000\6791364.4